(103)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.1833 OF 2003

Jawahar Singh Pali

Versus

The State of Chhattisgarh & others

POST FOR ORDER ON 2nd September, 2003

Sd/-
L.C.BHADOO
Judge

22nd September, 2003

(104)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.1833 OF 2003

PETITIONER:

Jawahar Singh Pali,
S/o Shri Bhau Singh Pali,
Aged about 45 years,
Occupation: Government servant,
Forest Department,
R/o Village: Danteshwari, Ward No.9,
Distt. Kawardha (C.G.)

Versus

RESPONDENTS:

1. The State of Chhattisgarh,
Through the Secretary,
Department of Scheduled Caste/
Scheduled Tribe Welfare,
Mantralaya, D.K.S. Building,
Raipur (C.G.)

2. The Collector
(Tribal Welfare Department),
Kawardha, Distt. Kawardha (C.G.)

3. The Tehsildar (Revenue), Kawardha,
Tehsil & Distt. Kawardha (C.G.)

4. The Commissioner,
Scheduled Caste/Scheduled Tribe,
Other Backward Community and
Minority Community Welfare
Department, Raipur (C.G.)

5. Anusuchit Janjati Praman Patra
Ucha Astariya Samithi, Raipur (C.G.)

2. The Divisional Forest Officer,
Kawardha, Distt. Kawardha (C.G.)

3. The Conservator,
Forest Department, Durg (C.G.)

Present: -

Smt. Renu Kochar, Advocate: For the petitioner

Shri Ranbir Singh, Govt. Advocate: For the State/respondents 1, 2, 3, 4, 6 & 7

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 2nd September, 2003)

1. The petitioner has preferred this writ petition under Article 226/ 227 of the Constitution of India, by which he had challenged the order dated 27.11.2002 (Annexure P-1) passed by the Collector, Kawardha (respondent No.2) by which the learned Collector reached the conclusion that the caste certificate of the petitioner is not genuine and he does not belong to Scheduled Tribe.

2. The case of the petitioner is that he is a permanent resident of Village: Danteshwari, Ward No.9, Distt. Kawardha and he received his education from the undivided State of Madhya Pradesh. The petitioner is son of Bhau Singh Gaderia (Dhangarh Caste). The petitioner belongs to Scheduled Tribe category. His caste is Dhangarh and sub-caste is Pali. The caste certificate (Annexure P-2) was issued by the competent authority in favour of the petitioner. The President of Madhya Pradesh SC/ST Officer Karmachari Sangh Block, Branch: Khairagarh, Distt. Rajnandgaon, made a complaint (Annexure P-3) on 25.08.99 to the Divisional Forest Officer, against the petitioner. The Collector, Kawardha, forwarded the complaint to respondent No.7. However, the petitioner had appeared and submitted the copies of the caste certificate along with an application (Annexure P-6). The Tehsildar, Kawardha, without appreciating the material facts and evidence available on record, has reached on a wrong finding that the complaint dated 25.08.99 has been found correct and he submitted the report to the Collector for further action. A copy of the report of respondent No.5 is Annexure P-4. On receipt of the report from respondent No.5, respondent No.7 vide notice dated 01.02.2003, directed the petitioner to file reply within 15 days in the Office of Conservator of Forest, Durg Circle, Durg.. The petitioner filed his reply which is Annexure P-5. Based on that respondent No.7 has initiated a departmental enquiry against the petitioner which is illegal and arbitrary.

3. According to the petitioner, the enquiry conducted by respondent No.3 was not according to law, as no statement of the petitioner was recorded, nor of the parents and relatives. The Search Officer and the Tehsildar has not made enquiry from the local place of residence and original place from which the petitioner or his father hails, as per the directions given by the Hon'ble Apex Court in the case of **Kumari Madhuri Patil & others vs. Additional Commissioner, Tribal Development & others** reported in **AIR 1995 SC 94**. Therefore, the Court may be pleased to call for the entire record and issue a writ in the nature of certiorari quashing the impugned order (Annexure P-1).

4. Return has been filed on behalf of respondents 1, 2, 3, 4, 6 & 7, in which it has been mentioned that the judicial review regarding the disputed question of caste is very limited. The interpretation of entries contained in the Constitution (Scheduled Tribes) Order, 1950, is not permissible, as the entry must be read as it is. A Sub-tribe on part of a group of any Tribe or Tribe community, if not specifically mentioned in any entry it cannot be read to be synonymous as mentioned in the order issued by the President. As per the Hon'ble Apex Court orders, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Articles 341 (2) and 342 (2) do not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. Orders once issued under Articles 341 (1) and 342 (1) cannot be varied by subsequent order or notification even by the President except by a law made by the Parliament.

5. The petitioner should have approached the 'Caste Scrutiny Committee' constituted at State level for declaration of social status when caste certificates have been doubted and question by the State authorities. According to Articles 341 (1) and 342 (2) of the Constitution of India, the President after consultation with the Governor of the State, issues Constitutional (SC/ST) Orders for the State, notifying the principles of Scheduled Caste and Scheduled Tribes. A copy of the President's order containing the list of Scheduled Tribes of the State of Chhattisgarh is Annexure R-1. Entry No.33 is relevant for the present context. In entry No.33 of the Presidential (ST) Order, there is no mention of 'Dhangar Gadariya' or sub-caste Pali. Therefore, the petitioner cannot claim the benefit of Presidential (ST) Order for the purpose of caste certificate. It is pertinent to mention that 'Dhangar Gadariya' Caste is not included in the list of Scheduled Tribes, whereas Dhangar Gadariya, Sub-caste Pali is included in the list of Other Backward Classes. The petitioner has claimed that Dhangar Gadariya Caste is Sub-caste of Pali, which comes under Scheduled Tribe, as per the Presidential (ST) Order. The submission of the petitioner is misconceived and entirely wrong. The Government of Madhya Pradesh had issued a notification/order for constitution of Caste Scrutiny Committee at District level and various authorities were appointed as members of the Committee. The said order dated 04.08.2000 is Annexure R-2. In District Kabeerdham (Kawardha) also District Caste Scrutiny Committee was constituted to hold an inquiry into caste certificates. The Enquiry Committee at District level held an enquiry regarding genuineness of the caste certificate of the petitioner and on enquiry the caste certificate of the petitioner was found to be a forged one. Therefore, departmental enquiry was recommended against the petitioner. The District Caste Scrutiny Committee has followed the instructions of the State and ,the order passed by the District Caste Scrutiny Committee is fair and reasonable. The District Caste Scrutiny Committee has found that the petitioner belongs to ,

'Dhangar Gadariya', which comes under the Other Backward Classes (OBC). A copy of the list of OBC issued by the Government of Madhya Pradesh is Annexure R-3.

6. I have heard the learned counsel for the parties and perused the record.

7. On receiving the complaint, the matter was forwarded to the Tehsildar, Kawardha, who enquired into the allegations of the complaint and reported the matter to the Collector. The report of the Collector is Annexure P-4. After going through the previous record of educational institutions and also the list of SC, ST & OBC issued by the Central Government, President of India and the State Governments, the learned Collector reached the conclusion that the caste of the petitioner 'Gadariya' and sub-caste 'Pali' falls under the category of OBC not Scheduled Tribe. Thereafter, the matter was considered by the District Scrutiny Committee constituted for the purpose of enquiring into the complaints regarding caste certificate. The said Committee is in consonance with the directions issued by the Hon'ble Apex Court in the case of **Kumari Madhuri Patil (*supra*)**. The Committee gave opportunity to the petitioner. The petitioner appeared before the Committee, but he could not satisfy the Committee. The Committee after enquiry reached the conclusion that the petitioner's caste does not fall under the category of Scheduled Tribe. A perusal of the Fourth Schedule (Annexure R-1) published by the Government reveals that at Serial No.33, Oraon, Dhanka, Dhangad are shown as Scheduled Tribe, whereas the caste of the petitioner is Gadariya and Gadariya has been declared as OBC as per the notification issued by the Govt. of Madhya Pradesh which is at Serial No.23 (Annexure R-3). Therefore, based on the enquiries made by the Tehsildar and the District Scrutiny Committee and on the perusal of the Fourth Schedule, the caste of the petitioner (Gadariya) does not fall under the category of the Scheduled Tribe. Moreover, as per the notification

issued by the Govt. of Madhya Pradesh, the petitioner's caste falls under the category of OBC.

8. The petitioner himself had appeared before the District Level Committee and he was given the opportunity. It is not the case of the petitioner that he was not given the opportunity by the District Level Committee. Moreover, if the petitioner had any grievance against the decision of the District Level Committee, then he had an opportunity to represent his case before the State Level Committee against the order of the District Level Committee which the petitioner has not availed. Therefore, the petitioner is not entitled for any relief under the writ jurisdiction. Under the writ jurisdiction, this Court is entitled to interfere only when the principles of natural justice have been shown to be violated and if proper opportunity was not given to the petitioner to defend his case. But, this is not the case of the petitioner. Moreover, on the perusal of the Fourth Schedule and the list of OBC issued by the Government of M.P. it reveals that the petitioner's caste falls under the category of OBC. The petitioner has not been able to establish the case by which it can be seen that the District Level Committee has exceeded his jurisdiction or that the District Level Committee had not given any opportunity to the petitioner to present his case. Therefore, in this case, no principles of natural justice have been violated nor the petitioner has been able to establish that any irregularity has been committed by the District Level Committee while conducting the enquiry regarding the genuineness of his caste certificate.

9. In the circumstances, I do not find any reason to exercise the power of judicial review against the order (Annexure P-1) of the Collector. The petitioner has not been able to make out a case. Accordingly, the writ petition is dismissed.

Sd/-
L.C.BHADOO
Judge

Soma

12.9.03